

Appeal from the May 8, 1984, decision of Fairbanks District Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. F-60554 through F-60556 and F-72490.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Effect of

Mining claims located on land closed to entry and location under the mining laws by a withdrawal order of the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act are null and void ab initio.

APPEARANCES: John Elmore, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John Elmore appeals from the May 8, 1984, Bureau of Land Management (BLM) decision of the Fairbanks District Office, declaring null and void his mining claims F-60554 through F-60556 and F-72490. The mining claims were located on September 24 and 27, 1979, and September 10, 1980, on lands within secs. 32 and 33, T. 6 S., R. 26 W., Kateel River Meridian, Alaska. BLM found that at the time the claims were located, the land embraced by the claims was segregated from mineral location, and for that reason, determined the claims were null and void ab initio.

According to the BLM decision, the subject lands have been segregated since July 23, 1973, from subsequent entry and location under the mining laws, as a result of the following actions:

On July 23, 1973, Public Land Order (PLO) 5353 withdrew among others, all the lands within T. 6 S., R. 26 W., Kateel River Meridian, pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 701, 43 U.S.C. Sec. 1611 which reserved this land for Native selections.

On December 15, 1975, Bering Straits Native Corporation filed selection application F-19149-1 on all lands in T. 6 S., R. 26 W., Kateel River Meridian.

Furthermore, on November 14, 1978, the State of Alaska filed State selection application F-44481 which included all of the lands within T. 6 S., R. 26 W., Kateel River Meridian under the provisions of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-343).

Elmore, in his May 25, 1984, statement of reasons for appeal argues that the Bering Straits Native Corporation selection conflicts with only one-half of one of his mining claims, the Jaybird #1, and that this claim is not one involved in this appeal. In addition, he appears to be arguing that the State selection of November 14, 1978, does not affect the validity of his claims because his claims have been assigned a State claim number and are recorded with the State Land Office in Anchorage. He disputes BLM's contention that as to one claim, F-72490, the Jaybird #5, there was no assessment affidavit or notice of intent to hold filed with BLM in 1983. He states that an affidavit was properly filed, but with an incorrect BLM number. Finally, he argues that he has invested considerable money in these claims based on his belief that they are valid, and he notes that his claims have not been previously contested.

BLM properly decided that the subject mining claims were null and void ab initio. However, whereas BLM's decision is based on the segregative effect of Public Land Order No. (PLO) 5353, 38 FR 19825 (July 24, 1973), the Bering Straits Native Corporation land selection, and the State land selection, respectively, our decision rests entirely upon the segregative effect of PLO 5353 which has been in effect continuously since July 24, 1973. That public land order provides that the subject lands are withdrawn from all forms of appropriation under the public land laws, including "location and entry under the mining laws." An axiom of public land law is that lands subject to a withdrawal order are segregated and unavailable for subsequent location and entry under the mining laws and that any claims located on such lands are null and void ab initio. Howard J. Hunt, 80 IBLA 396 (1984); Rick & Linda Anderson, 76 IBLA 212 (1983).

Because we rest our decision on the segregative effect of PLO 5353, we find it is unnecessary to resolve the apparent factual dispute between BLM and Elmore as to which, if any, of appellant's claims in this appeal are affected by the Bering Straits Native Corporation's selection of the lands in T. 6 S., R. 26 W., Kateel River Meridian. For the same reason, we shall not address the apparent factual dispute regarding the 1983 filing of the assessment affidavit or notice of intent to hold Jaybird #5.

In addition, we shall not determine the validity of appellant's claims in light of the November 14, 1978, State land selection since this, too, is unnecessary to the resolution of this appeal. For the record, however, we note that under PLO 5353, the land in question was "withdrawn from all forms of appropriation under the public land laws, including selections by the State of Alaska, under the Alaska Statehood Act." (Emphasis added). Not until November 20, 1981, was PLO 5353 amended by PLO 6092, 46 FR 57048-49 (Nov. 20, 1981), so as to permit such State selections. PLO 6092, supra, provides:

The purpose of this public land order is to modify and amend a number of public land orders and to classify and open lands to

selection by the State of Alaska under either the Alaska Statehood Act or Subsection 906(b) of the Alaska National Interest Lands Conservation Act, if such lands are otherwise available.

* * * * *

1. The following listed public land orders, [including PLO 5353] as amended, modified, or corrected, which withdrew lands from State selection pursuant to the authority vested in the President and delegated to the Secretary * * * are hereby modified and amended to the extent necessary to permit selection of the lands described therein by the State of Alaska * * *. [Emphasis added.]

Again, because we rest our decision on the segregative effect of PLO 5353, we shall not determine whether the Alaska State selection of these lands on November 14, 1978, was valid, and whether the State land selection, alone, would have prevented the claimant from validly locating his claims in 1979 and 1980.

Finally, we reject the equitable defenses of estoppel and laches raised by appellant. There is no basis in the record for an estoppel defense, because a crucial element of estoppel is missing. Appellant cannot claim he was ignorant of the true facts, *i.e.*, that the land was not open to mineral entry at the time he located his claims, because PLO 5353 was published in the Federal Register on July 24, 1973, and the withdrawal was therefore a matter of public record. Elmore had constructive notice of the withdrawal. 44 U.S.C. § 1507 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384, 385 (1947); Ronald R. Graham, 77 IBLA 174, 180 n.8 (1983). Moreover, as a general rule, the Government holds the public lands in trust for all people, and, therefore, is not to be deprived of this property by such defenses as laches and estoppel. Hallenbeck v. Kleppe, 590 F.2d 852, 855 (10th Cir. 1979), citing United States v. California, 332 U.S. 19, 40 (1947). See also Montana Copper King Mining Co., 20 IBLA 30, 37 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.,
Administrative Judge

Will A. Irwin
Administrative Judge

